

B O I E S , S C H I L L E R & F L E X N E R L L P

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July 19, 2016

BY ECF

The Honorable William H. Pauley, III
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: SEC v. Archer, et al., No. 16 Civ. 3505 (WHP)

Dear Judge Pauley:

I represent Devon Archer, one of the defendants in the above-referenced matter. I write to respectfully request an adjournment of the date by which all defendants other than Jason Galanis must answer or otherwise respond to the SEC's complaint, until such time as the Court rules on the motion by the United States Attorney's Office to intervene and to stay proceedings before Your Honor.¹ I also respectfully request that the Court adjourn the pretrial conference, which is currently scheduled for this Thursday, July 21st, at 3 PM, until after the USAO's motion is decided. As set forth in more detail below, all parties consent to these requests.

On July 11, 2016, the United States Attorney's Office moved to intervene in this case and for a stay of discovery, pending the resolution of its parallel criminal prosecution (*United States v. Jason Galanis, et al.*, No. 16 Cr. 371 (RA)). Under the Court's Local Rules, the parties must respond to the USAO's motion by this coming Monday, July 25th, and the USAO must reply by August 1st. Meanwhile, on July 14, 2016, Your Honor granted the SEC's request to extend the time in which to submit a Rule 26(f) report until after the USAO's motion has been decided. For similar reasons, the Court should extend the time for defendants to respond to the complaint, until 10 days after Your Honor decides the USAO's stay motion.

The Court should also adjourn the pretrial conference until after the USAO's motion has been decided. In the first place, it would be premature to discuss a case management order,

¹ The date by which defendants must move or answer is presently July 25, 2016, for all defendants other than Jason Galanis. [ECF Nos. 19, 20, 21, 22, 23, 26]. The SEC has stated that it believes Mr. Galanis's time to answer was June 28, 2016. [ECF No. 24]. For that reason, and because Mr. Galanis is presently unrepresented in both this case and in the parallel criminal case, we do not move on his behalf.

settlement, potential motion practice, or to set other relevant dates until the scope of discovery is clear. Moreover, the other item on the agenda – the resolution of non-party Timothy Anderson’s motion for a protective order [ECF No. 27] – is a discovery issue that should await resolution of the USAO’s motion, since it is quite possible that resolution of that motion could moot Anderson’s motion.

Accordingly, I respectfully request that the Court extend the filing date for defendants’ answers or motions until ten days after Your Honor has decided on the USAO’s motion, and that the Court adjourn the initial pretrial conference until a time soon thereafter. This is the defendants’ first request for an extension of time in which to respond to the complaint.² Counsel for defendants Gary Hirst and Bevan Cooney join in this request, as do counsel in the parallel criminal case for defendants John Galanis, Michelle Morton, and Hugh Dunkerly (who are expressly not appearing in this action). The SEC likewise consents to this request.

Thank you for your consideration.

Respectfully submitted,

/s/ Matthew L. Schwartz

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cc: All attorneys of record (by ECF)
All attorneys in the parallel criminal case (by e-mail)

² By letter dated July 13, 2016 and e-mailed to the Court, CJA counsel for defendant Michelle Morton in the parallel criminal case asked Your Honor to “stay all proceedings . . . until the conclusion of the criminal action.” In the same letter, however, counsel specifically stated that he was “not appearing” in this action, and his letter motion was not filed on ECF. For the avoidance of doubt, we are *not* asking the Court to stay all proceedings at this time; to the contrary, we anticipate that several defendants will be opposing the USAO’s motion. However, the defendants reserve their rights to seek a stay or further extensions in light of any decision the Court issues in connection with the USAO’s motion.